

**REDACTED – FOR PUBLIC INSPECTION, SUBJECT TO REQUEST FOR
CONFIDENTIAL TREATMENT**

FairPoint Broadband Internet Access Petition, CC Docket 02-33, WC Docket 10-90

In the Matters of)	
)	
Appropriate Framework for Broadband Access)	CC Docket No. 02-33
To the Internet over Wireline Facilities)	
)	
Connect America Fund)	WC Docket No. 10-90

FAIRPOINT COMMUNICATIONS, INC
PETITION FOR DECLARATORY RULING
OR, IN THE ALTERNATIVE, PETITION FOR WAIVER
TO PROVIDE BROADBAND INTERNET ACCESS SERVICE
ON A NON-COMMON CARRIER BASIS

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May 1, 2013

EXECUTIVE SUMMARY

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FairPoint seeks a declaratory ruling that its rate-of-return (“ROR”) incumbent local exchange carriers (“ILECs”) subsidiaries that offer wireline broadband Internet access transmission services (“BBIAS”) on a common carrier basis may elect blanket certification to discontinue BBIAS as a common carrier service while following the cost allocation rules that the Commission adopted for price cap carriers as set forth in its 2005 *Broadband Internet Access Order*. The cost allocation rules applied to price cap carriers in the 2005 *Broadband Internet Access Order* logically should apply to the FairPoint ROR ILECs because FairPoint’s ROR ILECs are effectively treated as price cap carriers, for all relevant purpose of this Petition, under the *USF/ICC Transformation Order*, and their interstate rates and universal service support are severed from costs. FairPoint asks the Commission to remove any uncertainty and declare that the FairPoint ROR ILECs may follow the cost allocation specifications for non-common carrier BBIAS offered by price cap carriers announced in the 2005 *Broadband Internet Access Order*.

In the alternative, FairPoint seeks a waiver of the Commission’s determination to treat FairPoint’s ROR ILECs differently than price cap carriers for cost allocation purposes when non-common carriage is elected for BBIAS, specifically to treat the FairPoint ROR ILECs as price cap carriers for BBIAS purposes under the 2005 *Broadband Internet Access Order*. Because FairPoint is uniquely situated under the *USF/ICC Transformation Order*, enforcement of the rule as written would not serve the Commission’s policy goals, and waiver is warranted in the interest of equity. Whether by declaratory ruling or waiver, FairPoint seeks to implement broadband deregulation on July 1, 2013.

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Pursuant to Section 1.2 of the Commission’s rules, FairPoint Communications, Inc. (“FairPoint”) hereby requests that the Commission issue a declaratory ruling regarding the application of the blanket certification granted to facilities-based, wireline broadband Internet access transmission providers to discontinue providing common carrier broadband Internet access transmission services without any change in interstate loop cost allocation.

I. INTRODUCTION

FairPoint seeks a declaratory ruling that its rate-of-return (“ROR”) incumbent local exchange carriers (“ILECs”) subsidiaries that offer wireline broadband Internet access transmission services (“BBIAS”) on a common carrier basis may elect blanket certification to discontinue BBIAS as a common carrier service without change to their cost allocation, under procedures that the Commission adopted for price cap carriers as set forth in its 2005 *Broadband Internet Access Order*.¹

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶¶ 128-138 (2005) (“2005 *Broadband Internet Access Order*”).

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FairPoint does not believe that a declaratory ruling is necessary to elect the blanket certification because the choice of electing common carrier or non-common carrier BBIAS was provided to all wireline broadband Internet access providers in that order, and FairPoint's ROR ILECs are such providers, but the Commission declined to adopt a cost allocation method for ROR carriers at that time. Moreover, the cost allocation rules applied to price cap carriers in the *2005 Broadband Internet Access Order* logically should apply to the FairPoint ROR ILECs because, for all relevant purposes, FairPoint's ROR ILECs are already treated as price cap carriers under the *USF/ICC Transformation Order*.² The fact that the Commission prescribed a cost allocation method only for price cap carriers in the *2005 Broadband Internet Access Order*, and withheld judgment on the treatment of ROR ILECs' costs,³ is a moot point now that the FairPoint ILECs' relevant interstate rates and universal service support are severed from costs. FairPoint nevertheless files this Petition out of an abundance of caution, recognizing that when the Commission adopted the *2005 Broadband Internet Access Order*, it did not anticipate the monumental changes that would occur with the implementation of the *USF/ICC Transformation Order*.

Accordingly, FairPoint asks the Commission to issue a declaratory ruling to remove any uncertainty created by the application of regulatory changes under the *USF/ICC Transformation Order* to the Commission's specifications for broadband deregulation in its *2005 Broadband Internet Access Order*. In the alternative, FairPoint seeks a waiver as necessary for the FairPoint

² *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶129 (2011) ("*USF/ICC Transformation Order*").

³ *2005 Broadband Internet Access Order*, ¶ 138.

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ROR ILECs to elect to provide non-common carrier BBIAS subject to the same cost allocation treatment as price cap carriers under the *2005 Broadband Internet Access Order*.⁴ Because FairPoint is uniquely situated under the *USF/ICC Transformation Order*, enforcement of the rule as written would not serve the Commission's policy goals, and waiver is warranted in the interest of equity. FairPoint seeks to implement broadband deregulation on July 1, 2013.

II. BACKGROUND

2005 Broadband Internet Access Order. In the *2005 Broadband Internet Access Order* the Commission found that BBIAS is a competitive service.⁵ In the interest of promoting competition, the Commission concluded that providers of wireline BBIAS such as ILECs that offer BBIAS transmission as a telecommunications service thenceforth would have a choice: they may continue to offer BBIAS under tariffed terms,⁶ they may offer BBIAS on a permissive detariffing basis,⁷ or they may discontinue offering BBIAS on a common carrier basis altogether.⁸ The Commission granted blanket authority for the discontinuance of common

⁴ See *2005 Broadband Internet Access Order*, ¶ 138.

⁵ *Broadband Internet Access Order*, ¶ 5.

⁶ *Broadband Internet Access Order*, ¶ 90.

⁷ See *2005 Broadband Internet Access Order*, ¶ 90. Two of FairPoint's ROR carriers (Ellensburg Telephone Company and YCOM Networks, Inc.) have already detariffed their BBIAS and exited the NECA pool. FairPoint will detariff the remainder of its ROR subsidiaries' BBIAS, effective July 1, 2013. FairPoint has already notified NECA about the detariffing for its remaining ROR subsidiaries. Effective July 1, 2013, FairPoint will include the rates, terms, and conditions for the BBIAS offered by its ROR subsidiaries in the generally available offerings posted on its website and it will also make physical copies of the offerings available for public inspection at one place of business, consistent with the requirements set forth in the *2005 Broadband Internet Access Order*. See *id.* No Commission action is necessary or requested with regard to this detariffing.

⁸ See *2005 Broadband Internet Access Order*, ¶ 100.

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carrier service for wireline BBIAS subject to certain conditions, specifically providing affected customers with advance notice of the discontinuance, and filing with the Commission a notice of intent to discontinue service.⁹ The Commission clearly stated that “[c]arriers are not required to make any showing in this notice [of discontinuance] and do not need to obtain any additional permission from the Commission to cease service.”¹⁰

In the *2005 Broadband Internet Access Order*, the Commission also addressed issues related to cost allocation for price cap carriers that elect to deregulate their BBIAS, concluding that ILECs should not shift any of their common line costs as a result of BBIAS deregulation. The Commission ordered the price cap ILECs “should classify this non-common carrier activity as a regulated activity under ... [the Part 64 cost allocation] rules and that this accounting treatment is consistent with section 254(k) of the Act.”¹¹ The Commission reasoned that the evolution of ratemaking methods over the years has greatly reduced ILECs’ incentives to overstate the costs of their tariffed telecommunications services and that “this reduction in

⁹ See *2005 Broadband Internet Access Order*, ¶ 101.

¹⁰ See *2005 Broadband Internet Access Order*, ¶ 101. The Commission added that “[t]his Order provides carriers all necessary authority to cease providing to existing customers the common carrier broadband Internet access transmission services that are the subject of this Order.” *2005 Broadband Internet Access Order*, note 308.

¹¹ *2005 Broadband Internet Access Order*, ¶ 128. Section 254(k) of the Communications Act of 1936, as amended, specifies that “[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.” 47 U.S.C. § 254(k).

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incentives diminishes the need for ILECs to apply detailed and burdensome procedures to exclude costs of providing broadband Internet access transmission from their regulated costs.”¹²

The Commission considered and rejected any cost reallocation related to the non-common carrier provision of BBIAS by price cap carriers, when it adopted the *2005 Broadband Internet Access Order*. The Commission first considered whether to require ILECs to treat BBIAS as an unregulated activity for purposes of Part 64 cost allocation rules.¹³ The Commission declined to do so, concluding that the costs of changing the accounting classification for non-common carrier BBIAS would outweigh any potential benefits.¹⁴ The Commission next considered whether a portion of interstate joint and common loop costs ought to be allocated to non-common carrier BBIAS transmission.¹⁵ Again, the Commission declined to order any change in cost allocation, finding that interstate loop costs of price cap carriers are recovered through subscriber line charges (“SLCs”) – thus, deregulation of BBIAS would have no impact on interstate access charges.¹⁶ The Commission also acknowledged that, in the

¹² *2005 Broadband Internet Access Order*, ¶ 133. Notably, the Commission explained that although its decision to treat non-common carrier provision of BBIAS as a regulated activity under Part 64 will affect rate of return computations on interstate Title II services, this is not a practical concern for ILECs regulated under the *CALLS* plan or price caps “because earnings determinations are not used in determining their price cap rates.” *Id.*, ¶ 137.

¹³ *2005 Broadband Internet Access Order*, ¶¶ 128, 137, and 139.

¹⁴ *2005 Broadband Internet Access Order*, ¶ 130.

¹⁵ *2005 Broadband Internet Access Order*, ¶¶ 140-142.

¹⁶ *2005 Broadband Internet Access Order*, ¶141 (“the interstate loop costs of price cap carriers are not assigned to different services that subscribers may receive over the loop, but are recovered directly from end users through subscriber line charges”). *See also id.*, ¶142 (“Costs need not be reallocated at this time from the subscriber line charge to non-common carrier, broadband Internet access transmission in order to prevent imposition of an unreasonable level of joint and common costs on services included in the definition of universal services”).

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absence of cost reallocation specific to BBIAS, the interstate rate-of-return computation for carriers offering non-common carrier BBIAS *would* be affected, but this did not alter the Commission's decision not to reallocate costs.¹⁷ The Commission noted that, for price cap carriers, earnings determinations (and thus cost allocations) do not affect the development of rates for interstate Title II services, and if it became necessary to calculate rate-of-return (such as for a low-end adjustment) the costs of BBIAS could be addressed at that time.¹⁸

A similar conclusion now is appropriate for FairPoint's ROR carriers. These carriers are subject to the Commission's Part 36 and Part 69 cost allocations. Although Part 69 rules have not been modified to address the separation of BBIAS from other special access services, FairPoint has adopted cost allocation procedures to do so. This cost allocation process is shown in Attachment 1 – Ellensburg Telephone Company 2011 Part 69 Cost Allocation. Under these cost allocation rules, BBIAS costs are specifically identified by separations categories¹⁹ and then directly assigned to the BBIAS subcategory of the special access Part 69 service element.²⁰

¹⁷ *2005 Broadband Internet Access Order*, ¶ 137.

¹⁸ *2005 Broadband Internet Access Order*, ¶ 137.

¹⁹ FairPoint identifies DSL-related costs in COE Category 4.11 – Wideband Exchange DSL, COE Category 4.21 Wideband IXC DSL, and in Cable and Wire Facility Category 3.1 Wideband IXC DSL. These investment costs are directly allocated to BBIAS and the Part 69 cost allocation process then uses those assignments to allocate reserves, depreciation expense, maintenance expense and other operating expenses to the BBIAS category in accordance with Part 69 cost allocation rules.

²⁰ Notably, the cost allocation issues raised in the *2005 Broadband Internet Access Order* no longer apply to interstate special access services. Any concern about the mixed costs for BBIAS and Title II special access services have been subsequently addressed by the Part 69 cost allocation procedures. With these costs having been separated, there is no way for FairPoint's ROR carriers to recover deregulated BBIAS costs from interstate special access rates. Although the costs of special access services should not be relevant to the Commission's consideration of this Petition to deregulate BBIAS, FairPoint has separately petitioned the Commission for

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Through the cost allocation process, BBIAS costs are accumulated in a category separate from other costs, and the ability to recover BBIAS costs from any other rate element is eliminated. Moreover, the *USF/ICC Transformation Order* also treats the FairPoint ROR carriers as price cap carrier for Connect America Fund (“CAF”) purposes, as explained below. Accordingly, Interstate Common Line Support (“ICLS”) and High Cost Loop Support (“HCLS”) are frozen for these price cap-affiliated ROR carriers, and cost allocation no longer is relevant to the amount of universal service support they receive. There is no need to address cost allocation when FairPoint offers BBIAS on a common-carrier basis.

The simple result of the *2005 Broadband Internet Access Order* is that all ILECs may permissibly detariff their BBIAS, and all ILECs may (in principle) deregulate their BBIAS; only price cap ILECs actually have deregulated their BBIAS, however, because the Commission addressed cost allocation only for price cap carriers, not for ROR carriers.²¹ The question now posed is whether, in light of recent transformational changes in rate development and universal

permission to convert its interstate special access services to operate under the price cap rules. *See Berkshire Telephone Corporation, Big Sandy Telecom, Inc., Bluestem Telephone Company, Chautauqua and Erie Telephone Corporation, Chouteau Telephone Company, Columbine Telecom Company, C-R Telephone Company, The El Paso Telephone Company, Ellensburg Telephone Company, FairPoint Communications Missouri, Inc., Fremont Telcom Co., The Germantown Independent Telephone Company, GTC, Inc., Marianna and Scenery Hill Telephone Company, Odin Telephone Exchange, Inc., The Orwell Telephone Company, Peoples Mutual Telephone Company, Sunflower Telephone Company, Inc., Taconic Telephone Corp., and YCOM Networks, Inc.*, Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 12-71 (filed March 1, 2012) (“*FairPoint Cost Companies Price Cap Conversion Petition*”). Fremont Telcom Co. is no longer a petitioning carrier for this request to convert to price caps following the consummation of the acquisition of this company by Blackfoot Telephone Cooperative, Inc.

²¹ *2005 Broadband Internet Access Order*, ¶ 138 (postponing decision on ROR carriers’ cost allocation ostensibly because ROR carriers did not express interest in deregulating BBIAS at that time).

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service, the FairPoint ROR ILECs should be viewed as the equivalent of price cap carriers for purposes of cost allocation associated with the BBIAS deregulation, so they may offer BBIAS on a non-common carrier basis without any cost reallocation, consistent with the *2005 Broadband Internet Access Order*. The answer is yes.

USF/ICC Transformation Order. Under the *USF/ICC Transformation Order*, ILEC switched access rates are being phased out over a period of several years, subject to separate transition schedules for ROR and price cap carriers.²² While the inter-carrier compensation (“ICC”) aspects of the *USF/ICC Transformation Order* continue to allow ROR carriers affiliated with price cap carriers a longer phase-down period for reducing ICC to zero,²³ ultimately all access charges will be reduced to zero for all ILECs.²⁴ For ROR and average schedule ILECs, costs no longer have any significance for interstate ratemaking.²⁵ Switched access rates are capped and adjusted each year according to detailed rules governing the inter-carrier compensation (“ICC”) transition.²⁶

²² *USF/ICC Transformation Order*, ¶ 35.

²³ *See USF/ICC Transformation Order*, ¶ 801.

²⁴ *See USF/ICC Transformation Order*, ¶ 790.

²⁵ The BOC ILECs are treated as CALLS price cap companies for purposes of the ICC transition, while FairPoint’s non-BOC ILECs in Northern New England are treated as non-CALLS price cap companies for ICC transition purposes, and FairPoint’s non-BOC ILECs outside of Northern New England (both cost-based and average schedule companies) are treated as ROR carriers for ICC transition purposes. Nevertheless, FairPoint does not believe these classifications have any bearing on the discreet cost allocation question at issue here due to the rigid phase-down of interstate switched access charges prescribed under the *USF/ICC Transformation Order*.

²⁶ *USF/ICC Transformation Order*, ¶ 35.

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The *USF/ICC Transformation Order* also froze all high-cost support for price cap carriers at 2011 levels, rendering irrelevant the costs of those carriers for purposes of interstate high-cost support.²⁷ ROR carriers affiliated with price cap carriers are treated as price cap carriers for purposes of universal service support according to the *USF/ICC Transformation Order*.

Specifically, the Commission made clear that consistent with its “goal of providing support to price cap companies on a forward-looking cost basis, rather than based on embedded costs, ... [it] will, for the purposes of CAF Phase I, *treat as price cap carriers the rate-of-return operating companies that are affiliated with holding companies for which the majority of access lines are regulated under price caps.*”²⁸ With regard to universal service support, this means that all support under the Commission’s existing high-cost support mechanisms is frozen on a study area basis for price cap carriers *and their ROR affiliates* until CAF Phase I is phased out and a new mechanism is implemented under CAF Phase II.²⁹ Put simply, all HCLS and ICLS received by FairPoint’s ROR ILECs is frozen, regardless of changes in the carriers’ loop costs, as noted above.

The *USF/ICC Transformation Order* bears significantly on the Commission’s prior determinations about cost allocations for BBIAS deregulation: for the FairPoint ROR ILECs, loop costs now are irrevocably divorced from both universal service support and regulated prices. Any Commission concerns about cost allocation for ROR carriers that elect to deregulate

²⁷ *USF/ICC Transformation Order*, ¶ 128.

²⁸ *USF/ICC Transformation Order*, ¶ 129.

²⁹ *USF/ICC Transformation Order*, ¶ 133 (emphasis added).

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BBIAS are effectively mooted by the subsequent changes in regulatory classification and the severing of any means for improper subsidies between regulated and unregulated services.

FairPoint's Unique Status. FairPoint is a company that evolved over time, through acquisitions, to include carriers that were regulated under all forms of interstate price regulation, and were eligible for all the different forms of high-cost funding programs administered under the Communications Act.³⁰ As a result of this diversity, FairPoint is uniquely affected by the *USF/ICC Transformation Order*. Importantly, the FairPoint ROR ILECs now are treated as price cap ILECs in matters affecting common line costs.

FairPoint companies fall into four categories of regulation and eligibility for high-cost support. First, FairPoint's Bell Operating Company ("BOC") operations in Northern New England were classified as non-rural price cap operations. These study areas qualified for high-cost model support and interstate access support based on rules for price cap carriers and non-rural study areas. Second, FairPoint's non-BOC ILECs in Northern New England were classified as rural price cap operations. Pursuant to permission granted to convert these study areas from cost-based ROR to price cap operations, these study areas qualified for frozen interstate common line support ("ICLS"), as well as high-cost loop support ("HCLS") and local switching support ("LSS") based on embedded costs.³¹ Third, most of FairPoint's non-BOC

³⁰ For a comprehensive survey of the FairPoint ILECs and their regulatory and support classifications, see *FairPoint Communications, Inc. Petition for Waiver of Section 54.313(c) of the Commission's Rules, 47 C.F.R. § 54.313(c)*, Petition For Waiver To Exclude IAS, ICLS and LSS From The Requirement To Repurpose Frozen High-Cost Support Toward Broadband Deployment In 2013 And Beyond, WC Docket Nos. 10-90 and 05-337 (filed Feb. 8, 2013).

³¹ See *Petition of Virgin Islands Telephone Corporation, for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company*

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ILECs operating outside of Northern New England were classified as rural ROR operations settling on a cost basis. These study areas qualified for HCLS, ICLS, and LSS on the basis of embedded costs. FairPoint petitioned the Commission over a year ago to convert the remainder of its cost-based ROR carriers to price cap regulation.³² Fourth, a handful of FairPoint's non-BOC ILECs were classified as rural ROR operations settling on an average schedule basis. These companies qualified for HCLS, ICLS, and LSS based on average schedule formulas.

All of FairPoint's ILECs are treated as price cap carriers for CAF purposes.³³ As of the date the *USC/ICC Transformation Order* was adopted, FairPoint was the only company whose cost-based ROR ILECs were treated as price cap carriers under the CAF rules, putting FairPoint in a unique position. The FCC can have no concerns about cost allocation for the FairPoint ROR carriers electing to deregulate broadband. Neither the universal service support calculations nor the interstate access rates of FairPoint's ROR ILECs will be affected.

of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Windstream Petition for Limited Waiver Relief, Order, 25 FCC Rcd 4824 (2010) ("FairPoint Price Cap Conversion Order").

³² See *FairPoint Cost Companies Price Cap Conversion Petition*, *supra*, note 20.

³³ See *USF/ICC Transformation Order*, ¶ 129.

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III. REQUEST FOR DECLARATORY RULING

FairPoint seeks a declaratory ruling that its ROR subsidiaries may elect to offer wireline BBIAS on a non-common carrier basis following the Commission's cost allocation determination for price cap carriers as specified in the *2005 Broadband Internet Access Order*. Granting this ruling would be consistent with the Commission's market-oriented intentions expressed in the *2005 Broadband Internet Access Order*. Particularly now that the uncertainty expressed in that order about cost allocation for ROR carriers is fully resolved through the new universal service and ICC regime, any hesitation to put the FairPoint ROR ILECs on equal footing with the other price cap ILECs must be overcome.

As explained above, the Commission treats the FairPoint ROR carriers as price cap carriers for purposes of universal service support, rendering moot any possible concern about improper cross-subsidization or loop cost allocation. Moreover, FairPoint has petitioned to the Commission to convert the remainder of its cost-based ROR ILECs to price cap regulation.³⁴ This price cap conversion petition remains pending, but a grant of that petition likely would render unnecessary the instant request for a declaratory ruling.³⁵ Both the treatment of FairPoint's ROR subsidiaries as price cap carriers as well as FairPoint's request to convert its cost based ROR carriers to price cap regulation underscore that there no longer can be any reasonable justification to require the FairPoint ROR subsidiaries to make any cost allocation for

³⁴ See generally *FairPoint Cost Companies Price Cap Conversion Petition*.

³⁵ If the Commission grants FairPoint's petition for price cap conversion, FairPoint's former ROR subsidiaries will become price cap carriers and automatically will fall under the cost allocation provisions set forth for price cap carriers in the *2005 Broadband Internet Access Order*.

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the portion of the common line used for BBIAS different from that which the Commission determined applicable for price cap carriers in the *2005 Broadband Internet Access Order*. None of the cost allocation issues raised in the *2005 Broadband Internet Access Order* should prevent FairPoint's ROR subsidiaries from being treated in the same way that Commission treats price cap carriers in the *2005 Broadband Internet Access Order*. As wireline BBIAS providers, FairPoint's ROR subsidiaries are covered by the blanket certification to discontinue offering their BBIAS on a common carrier basis, subject to the standard notice conditions, and should continue to allocate costs as they have done under the Part 64 rules, as the other price cap carriers have done.

IV. PETITION FOR WAIVER

If the Commission does not issue a declaratory ruling as requested, FairPoint respectfully requests that the Commission waive its determination in the *2005 Broadband Internet Access Order* to treat ROR carriers differently for purposes of cost allocation of the telecommunications portion of BBIAS, as it applies to the FairPoint ROR ILECs. As discussed above, FairPoint's ROR subsidiaries are more akin to price cap carriers than ROR carriers by virtue of the *USF/ICC Transformation Order*. The Commission's historical concerns about using support for regulated services to improperly subsidize unregulated services has little merit, if any, in the context of the current regulatory regime, where support for regulated services has been frozen and switched access rates are rigidly controlled and ultimately will be phased out.

The Commission may waive a rule for good cause where, due to special circumstances, deviation from the rule would better serve the public interest and the Commission's purposes

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than strict enforcement of the rule.³⁶ The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁷

Absent a waiver, FairPoint's ROR subsidiaries, even though treated as price cap carriers for purposes of regulated support, will be forced to incur significant time and cost to re-allocate the telecommunications costs of their BBIAS. Though its support is capped as that of a price cap carrier, FairPoint would not enjoy the flexibility and cost savings that price cap carriers enjoy.

The Commission previously found that, for price cap carriers, the "costs of changing the federal accounting classification of the costs underlying this transmission would outweigh any potential benefits and that section 254(k) of the Act does not mandate such a change."³⁸ Moreover, should the Commission grant FairPoint's petition to convert its cost based ROR subsidiaries to price cap regulation in the near term, there would be no need for FairPoint to conduct a cost allocation and it will have unnecessarily expended much-needed resources. As demonstrated herein, the relief requested by FairPoint is necessary to prevent undue hardship and an inequitable result under the rules. Grant of a waiver will serve the deregulatory and pro-competitive intentions expressed by the Commission in the *2005 Broadband Internet Access Order* while relieving undue regulatory burdens that disserve the Commission's policy goals.

V. CONCLUSION

For the reasons set forth above, the Commission should issue a declaratory ruling finding that FairPoint's ROR subsidiaries may discontinue offering BBIAS on a common carrier basis,

³⁶ 47 C.F.R. § 1.3. *See also, Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

³⁷ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

³⁸ *2005 Broadband Internet Access Order*, ¶ 130.

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subject to the notice provisions set forth in the *2005 Broadband Internet Access Order*, following the cost allocation rules prescribed for price cap carriers deregulating their BBIAS. In the alternative, the Commission should grant FairPoint the limited waiver relief requested herein. Prompt action is requested in order for FairPoint to implement BBIAS deregulation effective as of July 1, 2013.

Respectfully submitted,



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ATTACHMENT 1

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